

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TERRY RODGERS

*

Plaintiff,

*

v.

*

2:08-CV-359-MHT
(WO)

S. SANFORD, KITCHEN STEWARD,
et al.,

*

Defendants.

*

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff filed this 42 U.S.C. § 1983 action on May 16, 2008 while incarcerated at the Kilby Correctional Facility. On May 20, 2008 the court directed Plaintiff to forward to the Clerk an initial partial filing on or before June 10, 2008. Plaintiff's copy of the court's May 20 order was returned to the court marked as undeliverable because he was no longer at the most recent address he provided to the court. Using an alternate free world address located in Plaintiff's original complaint, the court entered an order on June 20, 2008 directing Plaintiff to file an updated *in forma pauperis* application on a form supplied by the court for use by persons proceeding *pro se*. The order cautioned Plaintiff that his failure to comply with the June 20 order would result in a Recommendation that his complaint be dismissed without prejudice and without further notice from the court. (*See Doc. No. 5.*)

Plaintiff failed to comply with the court's June 20 order and the undersigned, therefore, recommended that this matter be dismissed without prejudice. Thereafter,

Plaintiff notified the court that he had not received any mail from the court in May or June 2008. In light of this response, the court vacated the July 15, 2008 Recommendation of the Magistrate Judge on August 1, 2008 and granted Plaintiff an additional period of time to and including August 15, 2008 within which to submit an updated *in forma pauperis* application with the court as previously directed by order entered June 20, 2008. (*See Doc. No. 8.*)

The requisite time has passed and Plaintiff has not provided the court with an updated *in forma pauperis* application as directed by order filed August 1, 2008. Consequently, the court concludes that dismissal of this case is appropriate for Plaintiff's failures to prosecute this action and comply with the orders of the court.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED without prejudice for Plaintiff's failures to prosecute this action and to comply with the orders of this court.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **September 9, 2008**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District

Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 27th day of August 2008.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE